

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 11-20661
16-12363

CARL DEWAIN THOMAS,

Defendant.

**ORDER DENYING AS MOOT GOVERNMENT'S MOTION FOR STAY AND DENYING
WITHOUT PREJUDICE DEFENDANT'S MOTION TO VACATE SENTENCE**

Defendant was convicted by his plea of guilty to one count of Bank Robbery and Incidental Crimes in violation of 18 U.S.C. § 2113. He was sentenced to 132 months imprisonment. (Dkt. #22.) Presently before the court is his motion to vacate his sentence under 28 U.S.C. § 2255. (Dkt. #25.) He argues through counsel that his sentence under the Career Offender guideline, U.S.S.G. § 4B1.1, is no longer valid in light of the Supreme Court's decision in *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015).

Also before the court is the Government's motion to stay the motion to vacate pending the Supreme Court's decision in *Beckles v. United States*. (Dkt. #28.) Defendant did not object to the stay. (*Id.* at Pg. ID 97.) That case having now been decided, see *Beckles v. United States*, __ U.S. __, 137 S. Ct. 886 (2017), the court will therefore deny the motion to stay as moot.

The court will also deny the motion to vacate without prejudice and give Defendant an opportunity to refresh and refile the motion. If, in light of *Beckles* and

other developments in case law, Defendant determines he cannot refile his motion in good faith, he may file a statement withdrawing the motion to vacate. Accordingly,

IT IS ORDERED that the Government's Motion to Stay (Dkt. #28) is TERMINATED as MOOT.

IT IS FURTHER ORDERED that Defendant's Motion to Vacate Sentence Under 28 U.S.C. § 2255 (Dkt. #25) is DENIED WITHOUT PREJUDICE. Defendant is permitting to refresh and refile his motion, if he can do so in good faith, no later than **August 17, 2018**. If Defendant cannot refile in good faith, he may file a statement withdrawing his motion.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 16, 2018

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 16, 2018, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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